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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2854

12 KELLY MAGAN KIEFER
13 3118 Channel Drive
14 Ventura, CA 93003

**DEFAULT DECISION
AND ORDER**

Original Pharmacy Technician Registration
No. TCH 35554

[Gov. Code, §11520]

Respondent.

15
16 FINDINGS OF FACT

17 1. On or about July 8, 2005, Complainant Patricia F. Harris, in her
18 official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No.
19 2854 against Kelly Magan Kiefer (Respondent) before the Board of Pharmacy.

20 2. On or about December 22, 2000, the Board of Pharmacy issued
21 Original Pharmacy Technician Registration No. TCH 35554 to Respondent. The Original
22 Pharmacy Technician Registration was in full force and effect at all times relevant to the
23 charges brought herein and will expire on December 31, 2006, unless renewed.

24 3. On or about July 25, 2005, Sylvia Reyes, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation
26 No. 2854, Statement to Respondent, Notice of Defense, Request for Discovery, and
27 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of
28 record with the Board of Pharmacy, which was and is 3118 Channel Drive, Ventura, CA

1 93003. A copy of the Accusation is attached as exhibit A, and is incorporated herein by
2 reference.

3 4. Service of the Accusation was effective as a matter of law under
4 the provisions of Government Code section 11505, subdivision (c).

5 5. Government Code section 11506 states, in pertinent part:

6 "(c) The respondent shall be entitled to a hearing on the merits if the
7 respondent files a notice of defense, and the notice shall be deemed a specific denial of all
8 parts of the accusation not expressly admitted. Failure to file a notice of defense shall
9 constitute a waiver of respondent's right to a hearing, but the agency in its discretion may
10 nevertheless grant a hearing."

11 6. Respondent failed to file a Notice of Defense within 15 days after
12 service upon her of the Accusation, and therefore waived her right to a hearing on the
13 merits of Accusation No. 2854.

14 7. California Government Code section 11520 states, in pertinent
15 part:

16 "(a) If the respondent either fails to file a notice of defense or to appear at
17 the hearing, the agency may take action based upon the respondent's express
18 admissions or upon other evidence and affidavits may be used as evidence without
19 any notice to respondent."

20 8. Pursuant to its authority under Government Code section 11520,
21 the Board of Pharmacy finds Respondent is in default. The Board of Pharmacy will take
22 action without further hearing and, based on Respondent's express admissions by way of
23 default and the evidence before it, contained in exhibit A finds that the allegations in
24 Accusation No. 2854 are true.

25 9. The total costs for investigation and enforcement are \$1,384.50 as
26 of December 19, 2005.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Kelly Magan

1 Kiefer has subjected her Original Pharmacy Technician Registration No. TCH 35554 to
2 discipline.

3 2. A copy of the Accusation is attached.

4 3. The agency has jurisdiction to adjudicate this case by default.

5 4. The Board of Pharmacy is authorized to revoke Respondent's
6 Original Pharmacy Technician Registration based upon the following violations alleged
7 in the Accusation:

8 a. Business and Professions Code sections 490 and 4301,
9 subdivision (l) - conviction of a crime substantially related to the qualifications, function,
10 or duties of a pharmacy technician.

11 b. Business and Professions Code section 4060 and Health
12 and Safety Code section 11377, subdivision (a) - furnished a controlled substance to
13 herself.

14 c. Business and Professions Code section 4301, subdivision
15 (f) - committed dishonest acts.

16 ORDER

17 IT IS SO ORDERED that Original Pharmacy Technician Registration No.
18 TCH 35554, heretofore issued to Respondent Kelly Magan Kiefer, is revoked.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent
20 may serve a written motion requesting that the Decision be vacated and stating the
21 grounds relied on within seven (7) days after service of the Decision on Respondent. The
22 agency in its discretion may vacate the Decision and grant a hearing on a showing of good
23 cause, as defined in the statute.

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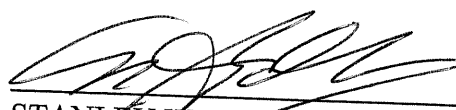
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1 This Decision shall become effective on March 8, 2006.

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3 It is so ORDERED February 6, 2006.

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6 BOARD OF PHARMACY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9
10 By



11 STANLEY W. GOLDENBERG
12 Board President

13 60118400.wpd

14 DOJ docket number: LA2005500810

15 Attachment: Exhibit A: Accusation No. 2854
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Exhibit A
Accusation No. 2854

1 BILL LOCKYER, Attorney General
of the State of California
2 MICHEL W. VALENTINE, State Bar No. 153078
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-1034
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2854

12 KELLY MAGAN KIEFER
3118 Channel Drive
13 Ventura, CA 93003

A C C U S A T I O N

14 Original Pharmacy Technician Registration No. TCH 35554

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs (Board).

22 2. On or about December 22, 2000, the Board issued Original Pharmacy
23 Technician Registration No. TCH 35554 to Kelly Magan Kiefer (Respondent). The Original
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on December 31, 2006, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board, under the authority of the
28 following laws. All section references are to the Business and Professions Code unless otherwise

1 indicated.

2 4. Section 4300 provides that every license issued by the Board may be
3 suspended or revoked.

4 5. Section 118(b) provides that the suspension / expiration / surrender /
5 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
6 action during the period within which the license may be renewed, restored, reissued or
7 reinstated.

8 6. Section 4301 states, in pertinent part:

9 "The board shall take action against any holder of a license who is guilty of
10 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
11 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
12 following:

13

14 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
15 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
16 otherwise, and whether the act is a felony or misdemeanor or not.

17

18 "(j) The violation of any of the statutes of this state or of the United States
19 regulating controlled substances and dangerous drugs.

20

21 "(l) The conviction of a crime substantially related to the qualifications, functions,
22 and duties of a licensee under this chapter. . . .

23 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
24 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
25 applicable federal and state laws and regulations governing pharmacy, including regulations
26 established by the board.

27 "(p) Actions or conduct that would have warranted denial of a license. . . ."

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1 17. California Code of Regulations, title 16, section 1770 states:

2 "For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
4 Code, a crime or act shall be considered substantially related to the qualifications, functions or
5 duties of a licensee or registrant if to a substantial degree it evidences present or potential
6 unfitness of a licensee or registrant to perform the functions authorized by his license or
7 registration in a manner consistent with the public health, safety, or welfare."

8 8. Section 4060 states, in pertinent part:

9 "No person shall possess any controlled substance, except that furnished to a
10 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
11 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
12 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1."

13 9. Health and Safety Code section 11170 states that "[n]o person shall
14 prescribe, administer, or furnish a controlled substance for himself."

15 10. Health and Safety Code section 11377(a) provides that it is illegal to
16 possess a controlled substance without a valid prescription.

17 11. Section 475 states, in pertinent part:

18 "(a) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the denial of licenses on the grounds of:

20

21 "(2) Conviction of a crime.

22 "(3) Commission of any act involving dishonesty, fraud or deceit with the intent
23 to substantially benefit himself or another, or substantially injure another.

24 "(4) Commission of any act which, if done by a licentiate of the business or
25 profession in question, would be grounds for suspension or revocation of license. . . ."

26 12. Section 480 states, in pertinent part:

27 "(a) A board may deny a license regulated by this code on the grounds that the
28 applicant has one of the following:

1 "(1) Been convicted of a crime. . . .

2 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
3 substantially benefit himself or another, or substantially injure another; or

4 "(3) Done any act which if done by a licentiate of the business or profession in
5 question, would be grounds for suspension or revocation of license.

6 "The board may deny a license pursuant to this subdivision only if the crime or act
7 is substantially related to the qualifications, functions or duties of the business or profession for
8 which application is made. . . ."

9 13. Section 490 states:

10 "A board may suspend or revoke a license on the ground that the licensee has been
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the license was issued. A conviction within the meaning
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
14 contendere. Any action which a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
18 Penal Code."

19 14. Section 125.3 states, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations
21 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 CONTROLLED SUBSTANCE / DANGEROUS DRUG

24 15. Methamphetamine is a Schedule II controlled substance as designated by
25 Health and Safety Code section 11055 (d)(2), and is categorized as a dangerous drug pursuant to
26 Business and Professions Code section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Convictions of Substantially Related Crimes)

3 16. Respondent is subject to disciplinary action under sections 4300, 490 and
4 4301(l), as defined in California Code of Regulations, title 16, section 1770, in that Respondent
5 was convicted of crimes substantially related to the qualifications, duties and functions of a
6 pharmacy technician, as follows:

7 a. On or about November 30, 2004, in a criminal proceeding entitled *The*
8 *People of the State of California v. Kelly Magan Kiefer* in Ventura County Superior Court, Case
9 No. 2004021038MA, Respondent was sentenced and convicted on a plea of guilty for violating
10 Penal Code section 484e(a) (forgery-sell, transfer or convey access card), a felony. The
11 underlying circumstances for the conviction are that on or about May 26, 2004, Ventura Police
12 Department (VPD) officers responded to a Macy's department store loss prevention officer at
13 which time VPD officers were informed that Respondent had attempted to purchase merchandise
14 using a stolen credit card, without permission. Respondent was arrested and found to be in
15 possession of items belong to others, drug paraphernalia and controlled substances, as follows:

- 16 1) a reported stolen credit card of victim Livanage,
17 2) a reported stolen checkbook of victim Sierra,
18 3) three syringes, and
19 4) 02.7 grams of tested positive Methamphetamines.

20 b. On or about November 30, 2004, in a criminal proceeding entitled *The*
21 *People of the State of California v. Kelly Magan Kiefer* in Ventura County Superior Court, Case
22 No. 2004026115FA, Respondent was sentenced and convicted on a plea of guilty for violating
23 Penal Code section 459 (second degree burglary), a misdemeanor. The underlying circumstances
24 for the conviction are that on or about July 5, 2004, Ventura County Sheriff's Department
25 officers responded to Target, Camarillo, department store loss prevention officers at which time
26 the sheriffs were informed that Respondent had used a razor blade to cut away cell phones from
27 their security cables in an attempt to carry away the property of another. Respondent was
28 arrested and found to be in possession of drug paraphernalia and controlled substances, as

1 follows:

- 2 1) a glass smoking pipe, for which Respondent identified to be a "speed pipe," and
3 2) five (5) plastic baggies with an aggregate 2.06 grams of tested positive
4 Methamphetamines.

5 c. On or about September 30, 2004, in a criminal proceeding entitled *The*
6 *People of the State of California v. Kelly Magan Kiefer* in Ventura County Superior Court, Case
7 No. 2004034141MA, Respondent was sentenced and convicted on a plea of guilty for violating
8 Penal Code section 484(a) (theft), a misdemeanor, committed on or about September 2, 2004 by
9 Respondent.

10 SECOND CAUSE FOR DISCIPLINE

11 (Controlled Substance / Dangerous Drug Violations)

12 17. Respondent is subject to disciplinary action under sections 4300 and
13 4301(j), on the grounds of unprofessional conduct, for violating section 4060 and Health and
14 Safety Code sections 11170 and 11377(a), in that on or about May 26, 2004 and July 5, 2004, on
15 two separate occasions, Respondent was found to be in possession of the controlled substance
16 and dangerous drug, Methamphetamine, having furnished herself Methamphetamine without a
17 valid prescription.

18 THIRD CAUSE FOR DISCIPLINE

19 (Possession of Controlled Substances / Dangerous Drugs)

20 18. Respondent is subject to disciplinary action under sections 4300 and
21 4301(o), on the grounds of unprofessional conduct, for violating section 4060 and Health and
22 Safety Code sections 11170 and 11377(a), in that on or about May 26, 2004 and July 5, 2004, on
23 two separate occasions, Respondent was found to be in possession of the controlled substance
24 and dangerous drug, Methamphetamine, having furnished herself Methamphetamine without a
25 valid prescription.

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FOURTH CAUSE FOR DISCIPLINE

(Dishonest Acts)

S. Respondent is subject to disciplinary action under sections 4300 and 4301(f), on the grounds of unprofessional conduct, in that on or about May 26, 2004, July 5, 2004, and September 2, 2004, Respondent committed dishonest acts with the intent to substantially benefit herself or another, or substantially injure another.

FIFTH CAUSE FOR DISCIPLINE

(Conduct Warranting Denial of License)

T. Respondent is subject to disciplinary action under sections 4300 and 4301(p), in conjunction with sections 475 and 480, in that on or about May 26, 2004, July 5, 2004, September 2, 2004, September 30, 2004, and November 30, 2004, Respondent committed acts which if done by a licensed pharmacy technician would be grounds for discipline as a licensee, and are actions or conduct that would warrant denial of a license.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

A. Revoking or suspending Original Pharmacy Technician Registration No. TCH 35554, issued to Kelly Magan Kiefer.

B. Ordering Kelly Magan Kiefer to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

C. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/05


PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant